

A COMPARISON OF FOREIGN MILITARY SALES AND DIRECT COMMERCIAL SALES

INTRODUCTION

In today's global economy, nations and international organizations have numerous choices among the various military systems produced throughout the world. The selection process must consider many factors to include system cost, performance, delivery schedule, lifecycle logistics support, interoperability, and industrial utilization as well as the political implications of the selected source. Customers must rank the priorities in their selection process and evaluate the relative benefits and shortcomings of the systems under review.

If the customer is an ally or friend of the U.S., hopefully, the prospective customer will consider one or more U.S. systems. The Department of Defense's (DoD's) official position regarding the customer's selection is clear. The DoD prefers that allies and friendly nations chose to purchase U.S. systems rather than foreign systems. The reason for the U.S. preference relates to the various political, military and economic advantages derived from the U.S. and its friends using the same military equipment.

Although DoD officially prefers that allies and friends select U.S. systems, the DoD is officially neutral regarding the choice to purchase via foreign military sales (FMS) or direct commercial sales (DCS). Under law, U.S. military systems can be purchased through the FMS process or through DCS. The preceding chapters in this text have provided a thorough explanation of the FMS process. This chapter will compare the FMS process to the DCS process.

The purpose of this chapter is not to promote one procurement method over the other. In reality, what method is best for a particular customer depends on a number of considerations. The purpose of this chapter is to look at the various areas that should be considered in making the FMS/DCS decision. By understanding these factors and applying them to a customer's specific situation, a better decision can be made regarding which method offers the best approach for a particular acquisition.

DIRECTED SOURCE ITEMS

Although most items can be purchased through either FMS or DCS, in limited instances, technology or security concerns may require that sales of specific items be restricted to FMS only. The *Security Assistance Management Manual* (SAMM) C4.5.9 outlines the process for designating an item as "FMS only". The "FMS only" designation may be based on legislation, presidential policy, disclosure policy, interoperability concerns or safety concerns. The Defense Technology Security Administration (DTSA) monitors this process through its involvement with the Department of State in reviewing commercial export license requests. Examples of "FMS only" items are man portable air defense missiles, certain cryptographic equipment, precise positioning service and airborne early warning and control systems.

On the other hand, U.S. firms can request that military items that they produce only be sold to foreign purchasers by DCS. Such requests should be sent to the DSCA. When approved, these DCS preference requests will be honored for one year. When the U.S. contractor has been approved for DCS preference, DSCA policy requires that prospective purchasers be informed of the contractor's preference for commercial sales. If, after such notification, the customer still wishes to purchase through FMS, it must provide justification to DoD for the FMS procurement.

There are some defense manufacturers that do not wish to sell their products on a direct basis to foreign purchasers. If a foreign customer wants to purchase these items, the sales can be made through FMS channels.

COMPARISON CONSIDERATIONS

Relationships

Under FMS, the customer is entering a direct government-to-government relationship with the USG. In fact, the customer is purchasing directly from the U.S. government (USG). The FMS sale constitutes a direct relationship between the two governments and interaction between their representatives in the execution of the FMS sale.

Depending on the political climate, this can be viewed as either an advantage or a disadvantage. Some nations and international organizations desire the association implied by the FMS interaction. Other governments, where the popular view of the U.S. is not as positive, may desire to distance themselves from the USG and enter into a DCS arrangement with a U.S. contractor. Public opinion may view a relationship with U.S. industry more favorably than the direct government-to-government relationship inherent in FMS.

USG Involvement

The USG is involved in approving both FMS and DCS sales. For FMS, DSCA consults with the State Department for approval to develop new FMS cases. For DCS, the contractor must apply to the State Department to obtain an export license. In either method, the Department of State makes the final decision to authorize military defense sales.

Under the AECA, both FMS and DCS sales must be notified to U.S. Congress if the proposed sale meets or exceeds the statutory dollar thresholds. The statutory notification requirements are essentially the same for both FMS and DCS.

It should also be noted that the USG always reserves the right to terminate a DCS munitions export license or a FMS LOA and to halt the actual export deliveries of FMS items or DCS licensed items when it is determined to be in the national interest of the U.S.

U.S. Military Involvement

Planning and purchase considerations may involve a complex weapon system configuration, undetermined levels of spare parts and support equipment, operational and logistics support, training requirements, selection of the suppliers, advice in deployment doctrine and tactics, and a perceived need for military-to-military contact throughout and beyond the procurement period for the item.

The FMS system engages the military personnel of the purchasing government and U.S. military personnel in a joint problem-solution process designed to procure, deploy, and support the item involved. Whatever level of continuing inter-military contact is maintained, it is important to recognize that the FMS process creates a government-to-government relationship in the defense field. This is true regardless of whether or not more formal relationships (e.g., alliances) have been established.

For their part, contractor personnel can be expected to be familiar with the products they sell directly to foreign governments. Defense contractors typically employ individuals that possess extensive experience with the DoD with many individuals possessing prior active duty experience in the U.S. military. In spite of this, many customers value the direct interaction with DoD civilian and military personnel offered through the FMS process.

Lead Times

Generally speaking, defense articles that are in production can be procured more quickly via commercial channels than through the FMS system. The FMS acquisition process involves the development, review, and acceptance of the LOA, plus the assembling of requirements for economic/consolidated purchasing cycles, as well as contract negotiations, and production lead times.

By contrast, the DCS system only involves contract negotiations and production lead times. In general, industry prepares its proposal more quickly than the USG prepares letters of offer and acceptance. It is also possible that governments with a well-developed purchasing capability can negotiate sales contracts more quickly than DoD.

For secondary and support items, the DoD may maintain an inventory. In cases of an emergency for the purchaser, if the materiel is available in DoD inventories, it may be possible for the FMS purchaser to achieve faster delivery through shipment from DoD stocks or through the diversion of items that are under production for DoD. Contractors normally do not produce items in anticipation of sales and generally do not maintain an extensive inventory of defense articles. The possibility of such diversions or withdrawals from DoD stocks in bona fide emergencies should be weighed carefully by a purchasing government before a choice is made between commercial and FMS procurement.

Contract Issues

Whichever procurement system a foreign government decides is best for its situation, some basic form of legal agreement is required. The contract process has several areas that should be evaluated by prospective customers.

Under the FMS system, purchases for foreign governments are made by a well-established DoD contracting network. DoD is committed to procuring defense articles through the FMS system under the same contractual provisions used for its own procurements. This system is designed to acquire required quality items at the lowest feasible price from qualified sources and to provide for contract administration. In fact, FMS and DoD orders are often consolidated to obtain economy-of-scale buys and therefore significantly lower unit prices. For the contracting and administrative services provided by DoD, the foreign purchaser is charged an appropriate fee in the LOA.

In DCS, the customer assumes contract negotiation and management responsibility. These activities represent overhead management costs to the customer in addition to the actual contract cost. Although it is not necessary for a purchaser to duplicate fully the DoD contracting network in order to make a wise commercial purchase, the size and skill of the purchaser's contracting staff may be a limiting factor in the quantity and complexity of DCS procurements. Many contractors and subcontractors may be involved in supplying a weapon system, since no single contractor can normally provide a total major system. Multiple contracts may be necessary to make the total system procurement.

Contract Negotiation

Governments with extensive business ties to the West, and which are knowledgeable of U.S. law and financing, may perceive additional flexibility in direct commercial sales. The greater degree of flexibility in contracting is possible because U.S. industry has no structured, regulatory guidance, such as the FAR, that must be followed as is the situation in FMS. Customers may wish to participate actively in tailoring the procurement process by fixing delivery schedules, negotiating fixed prices, and insuring that designated penalties are stipulated for contractor failure to comply with the contractual agreement and including special warranty provisions. Other flexible arrangements that may be negotiated into a DCS sale might include a used aircraft trade-in or a sale involving a barter arrangement as partial payment.

The USG assumes responsibility for the procurement of FMS items. It determines the contract type, selects the contract source, and negotiates prices and contract terms with individual contractors. These negotiations are conducted on the same basis as procurements for DoD purchasers. Under FMS, the foreign purchaser trusts the USG to negotiate a contract that meets the customers' needs.

The USG generally purchases directly from as many original manufacturers as possible, thereby minimizing the purchase price. This approach avoids going through a single prime contractor to procure various items from subcontractors and the associated prime contractor mark-ups in price. Unless a country's purchasing staff is sufficiently large and skilled, a comparable procurement approach of purchasing direct from subcontractors cannot be duplicated in DCS.

Contract Administration

Under FMS, contract quality assurance, inspection, and audit services are routinely provided and are included as components of the overall FMS cost.

For commercial contracts, the purchasing government must assess the total resources it must maintain in order to monitor production, evaluate modifications, provide for improvements, and ensure contract compliance. A large number of highly educated personnel, well trained in international commerce, may be required to perform such functions.

For DCS, rather than placing customer personnel throughout the U.S. to perform contract administration, it may be more cost effective to acquire this support from the USG. It is possible for the customer to purchase contract administrative services under a separate FMS case.

Financial Considerations

The issue of the total FMS costs in comparison to DCS cost is frequently a factor considered by the purchasing government. It is difficult to predict for any particular acquisition whether it would be less expensive to employ the FMS system or direct commercial channels. The differing contractual pricing and financing approaches as well as variations in the total package content make cost comparisons between FMS and DCS quite difficult.

Estimated Price Versus Final Price

The FMS system provides for an estimated prices and estimated payment schedules. The final price of an FMS item or service generally will not be known until after it is delivered. The final price is determined by actual USG contract cost and other authorized charges that are required to be charged under the provisions of U.S. laws and regulations.

The fact that the final LOA cost is generally lower than the initial LOA price estimate is a distinctive feature of the government-to-government FMS agreement. A multi-year DoD analysis of LOA prices revealed that final LOA costs generally fall below initial LOA estimates. The analysis reflected a range of such decreases, averaging about 11-13 percent. The reason for this situation is that the U.S. personnel who prepare LOA estimates have experienced the various problems resulting from underestimated prices; therefore, they may tend to introduce a safety factor in their estimates for unanticipated increases in labor or raw materiel costs, higher than projected inflation rates or other increases. While this is an interesting observation, the customer cannot count on their particular LOA overestimating the final cost.

DCS prices, on the other hand, typically provide a fixed price, with fixed payment schedules. Under DCS, the customer can know the final price at the time of contract signature.

Support Package Differences

Under the FMS system, the USG includes all support equipment, spare parts, training and publications, in the total package approach for FMS cases. In DCS, the contractor may also develop a support package for the primary item. Depending on the factors used to develop these support

packages, the actual content of the support packages may differ. As such, there may be significant cost differences in the FMS offer versus the DCS proposal even though both contain the same type and quantity of primary items.

In DCS, contractors may be able to achieve cost saving by offering other than normal DoD military standard configurations. It is important for the customer to understand any deviations from typical DoD configurations because this may limit interoperability as well as cooperative logistics follow-on support from DoD. The cost savings achieved in the initial acquisition may be quickly outweighed by the added cost of sustaining a nonstandard system.

Contract Price Factors

In situations where there are two or more manufacturers competing for the foreign business DCS contract prices may be less than FMS prices. This may be possible because the manufacturers may be willing to agree to fixed prices which are below the normal profit margins allowable under DoD contracting regulations.

Price advantages under direct commercial sales also may be possible during times of rapid inflation in the United States, especially if the contractor has the ability to make quick deliveries from off-the-shelf inventories or rapid new production. Under this circumstance, direct commercial sales may keep total costs at an amount lower than is possible under the DoD contracting system.

As stated earlier, FMS may offer lower contract prices through larger quantity buys achieved by grouping DoD and multiple FMS requirements into a single procurement.

Cash Flow Requirements

Direct commercial contracts generally require a relatively large down payment, payable at the time of contract signature. The size of such down payments varies with circumstances and the level of contractor risk. For FMS cases, the initial deposit required at LOA acceptance is generally somewhat lower than commercial contract down payments. For items which have a substantial production period, the phased progress payment system used for FMS may distribute the payment burden beyond the payment requirements of commercial contracts. Further, it is possible that commercial contracts may be made more expensive by the cost of money required to fulfill advance payment requirements. Such possible differences in payment terms, therefore, should be evaluated as part of the purchaser's procurement decision.

One special feature of the FMS system involves the use of cross-leveling agreements. Such agreements allow country funds which are on deposit in the FMS trust fund to be moved to and from special holding accounts, or moved between separate FMS cases, thereby maximizing the use of country funds. This practice is in contrast to direct commercial contracts, which stand alone and typically provide for fixed prices with fixed payment schedules, but with no provision for the movement of funds between individual contracts. In short, cross-leveling under FMS provides the advantage of flexibility to the purchaser to meet changing requirements, whereas commercial sales offer the advantage of providing a final price at the time of contract signature.

Concurrent Price Comparisons

The USG does not compete with U.S. industry for foreign sales. Moreover, as a matter of policy, the USG normally does not knowingly provide foreign governments with comparison pricing information, especially in those instances where it is known that a direct commercial contract is already being negotiated. An exception to the policy of not providing comparison pricing information can be made if the country has a national policy requiring both FMS and commercial data be obtained.

Nonrecurring Cost Application

The AECA requires a charge for a proportionate amount of any nonrecurring costs of research (NRC), development, and production of major defense equipment sold through FMS. However, DCS is exempt from these NRC costs, so in this regard, it appears that DCS has an advantage. However, for customers desiring to purchase via FMS, a provision exists to waive the application of NRC under FMS. The purchaser can request a waiver when:

- Standardization benefits result to the U.S. from the sale
- Cost saving benefits accrue to the U.S. as a result of economic quantity purchases
- Loss of sale would occur if waiver is not granted

Waiver requests must be made by the country on a case-by-case basis and must be submitted prior to acceptance of the FMS LOA. If recent history is used as an indicator, the waiver has a high probability of approval.

Other Costs

The issue of hidden costs in both commercial contracts and FMS agreements also requires clarification. The FMS administrative surcharge and contract administration services costs that are added to the basic price of an FMS agreement to recover the cost of operating the FMS and procurement processes. Except for specific statutory exemptions, all USG expenses for FMS program implementation must be recovered from the purchaser. The administrative surcharge insures recovery of such costs as those involving sales negotiations, case implementation, contract negotiation, contract management, financial management, certain reports of discrepancy, etc. Contractor profits are also included within the final FMS price, but are limited by the provisions of the FAR.

Conversely, the profit ceiling for commercial contracts is established by the marketplace. The purchasing government will not normally have access to information which reveals how much general and administrative costs or overall contractor profit is included in a direct commercial contract. U.S. firms typically add administrative costs as part of their equipment unit prices, whereas FMS administrative costs are identified as a separate line item on the FMS agreement.

Production Priority Considerations

There are many defense articles produced by U.S. industry using production equipment provided by DoD or in USG-owned facilities. Such production equipment and facilities are made available to the contractor to fulfill DoD requirements including FMS requirements. Contractors may use such facilities and equipment for direct commercial sales only with USG approval and only when there is no adverse impact on DoD requirements. Except in times of crisis, the prioritization of the use of such equipment or facilities generally is not a problem.

The USG has established an industrial priority system to resolve such conflicts in production priorities. Each U.S. defense program is assigned a specific priority based on the program's relative importance to the USG. The USG uses its relative need for a system to settle production conflicts rather than leaving such resolution to the discretion of contractors. Foreign military sales equipment normally is purchased together with U.S. equipment, and thereby shares the U.S. industrial priority. Direct commercial sales, however, involve independent contracts that do not automatically receive the same production priorities as DoD procurements.

Another consideration involves government-furnished equipment (GFE) or government-furnished materiel (GFM). Such items are generally incorporated by the contractor into larger systems which are then delivered to either DoD or a foreign government. Contractor access to GFE or GFM in support of DCS could have a significant impact on the capability of a contractor to make a direct sale.

By contrast, under the FMS system, DoD coordinates delivery of GFE or GFM directly to the prime contractor for both U.S. and FMS requirements.

If GFE and GFM components are not available directly to a contractor, the foreign purchaser could acquire them under FMS procedures, and then provide them to the contractor for incorporation in the end item. This procedure, of course, would make a commercial acquisition more complex for the purchaser, and would require his careful coordination of both the commercial and the FMS transaction.

Follow-on Logistics Support

An important consideration in the purchase of U.S. defense articles involves the nature of the follow-on support which will be required from U.S. sources. If the items being purchased are being used by the U.S. military, and are known to require substantial logistical, technical, and training support, an FMS purchase may offer support advantages. FMS permits the purchaser to capitalize on U.S. experience and existing USG logistics inventories and training facilities. Under a cooperative logistics supply support arrangement (CLSSA), most of the DoD spare parts inventory and contracting system can be drawn upon in support of the purchaser's requirements, and this can be accomplished simply by the submission of requisitions for individual parts. In effect, the DoD logistics structure serves as a procurement staff for the purchaser by procuring required individual items from the current U.S. sources.

There are some U.S. contractors who also are capable of providing full logistics support for the items which they sell. Corporate reputations depend on good performance and, where contractors have the capability of furnishing such support, the results can be expected to be as stated in their contracts.

The DoD may provide follow-on support for end items acquired through DCS. However, DoD's ability to support DCS items may be limited where equipment may not match the support available through the normal U.S. logistics systems. For example, if the manufacturer only employs commercial stock numbers to identify items, without cross-referencing to DoD national stock numbers, USG support will be greatly complicated and support delays may result.

Logistics support is frequently facilitated by the FMS purchaser's ability to use DoD information and data transmission systems such as the international logistics communications system (ILCS), supply tracking and reparable return/personal computer (STARR/PC), Air Force Security Assistance Center (AFSAC) on-Line, Navy e-business suite, and the security assistance information portal (SCIP). DoD also has security assistance dedicated staffs and in-country security assistance officers for the administration of the FMS program.

Nonstandard Items

Historically, DoD has not performed well at providing nonstandard item support because it lacks the normal logistics infrastructure that is in place for standard items. Previously, DCS provided better access and performance to nonstandard items. The DoD has improved in this area by implementing commercial buying service support for nonstandard items. Essentially, DoD has contracted out nonstandard support by means of CBS. FMS customers can access the CBS nonstandard support by using FMS cases.

Training

Training is a key element to successfully operating and maintaining today's high technology military equipment. The DoD has established training resources to support its own training needs. Under FMS, customers can access many of these training resources. Although the DoD does itself acquire contractor training in certain circumstances, some training is simply not available through commercial sources. For example, contractors cannot provide some of the training range resources that are unique to DoD.

On the other hand, the customer may require some form of tailored training that is not available from DoD. As an example, DoD training is normally conducted using only the English language. If the customer required training in its native language, contractor training could be an alternative training source.

Classified Items

The FMS process assures that all security provisions are in place for sales of classified items, and it also provides for required purchaser agreements to protect U.S. concerns and to assure the proper use of the article or service. Required security agreements and inspections, may be mandated by the USG before negotiations in support of either a commercial sale or an FMS agreement can be approved.

In DCS arrangements, before an export license for classified material may be granted, security agreements establishing appropriate security measures must be executed between the purchasing government and the USG. The requirement for a security agreement is determined during the DoD review of the license request.

Foreign Military Financing Program Funding

Foreign military financing program (FMFP) funding generally requires that it be used through the FMS process. However, FMFP funding can in certain circumstances be used to fund DCS contracts. Under law, only ten countries are authorized to use FMFP funding to pay for DCS contracts: Israel, Egypt, Jordan, Morocco, Tunisia, Turkey, Portugal, Pakistan, Yemen, and Greece.

These purchases are approved by DSCA on a case-by-case basis using “Guidelines for Foreign Military Financing of Direct Commercial Contracts” and contractor certification provided at <http://www.dsca.mil/>. Commercial contracts financed with FMFP must be valued at \$100,000 or more and are intended for the procurement of non-standard items (items that do not have a national stock number and are not procured by DoD). Exceptions may be requested from DSCA with written justification. The prime contractor must be a U.S. supplier or manufacturer, incorporated or licensed to do business in the United States.

SUMMARY

The FMS system and the DCS system are simply different contracting methods which a foreign government may employ for the purchase of U.S. defense articles and services. In the commercial case, a U.S. contractor and a foreign government enter into a direct contract in accordance with U.S. law and regulations, and provisions of international commercial law. The USG is not a party to these commercial contractual transactions. The foreign government has the responsibility in such purchases to select the source and manage the contract directly with the U.S. contractor.

Under the FMS system, the USG and the foreign purchaser enter into an agreement (the FMS LOA) which specifies the terms and conditions of the sale. Thereafter, except for items supplied directly from DoD inventory, the USG buys the desired item or weapon system from the U.S. manufacturer on behalf of the foreign government, employing essentially the same procurement criteria as if the item/system was being purchased for U.S. needs. The USG, not the foreign government, selects the source and manages the contract, consistent with the provisions of the FAR and the LOA.

In reviewing the pertinent factors associated with the two procurement systems, one should bear in mind that unless the Department of State has determined that a specific item or service will only be offered via FMS, there are few absolutes which dictate that all countries should select exclusively either FMS or commercial channels for a given purchase requirement. Rather, there are many considerations, unique both to the individual purchaser and to the items being procured, that are involved in such a choice. The final decision on purchasing channels varies from country to country, and even from purchase to purchase. Given the variety of factors involved, it is important that the purchasing government’s decision encompass as many factual considerations as possible.

REFERENCES

DoD 5105.38-M, *Security Assistance Management Manual* (SAMM), Chapter 4, 6, and 9.

Guidelines for Foreign Military Financing of Direct Commercial Contracts and Contractor's Certification and Agreement with DSCA.

ATTACHMENT 15-1

FOREIGN MILITARY SALES - POTENTIAL ADVANTAGES AND CONSIDERATIONS

Potential Advantages

1. Total package approach based on U.S. military experience.
2. USG uses its own procurement procedures and acts as procurement agent for foreign countries.
3. Proven and established logistics support for items common to DoD.
4. Federal Acquisition Regulations, economic order quantity buys, use of GFE or GFM tends to reduce price.
5. Facilitates establishment of design configuration and enhances potential for standardization
6. Purchaser pays only the actual cost to DoD (including management expenses), with profits controlled by the FAR.
7. Cross-leveling in the FMS trust fund can maximize use of country funds.
8. Quality control to assure item meets MILSPECs is done by USG personnel.
9. Items may be available from DoD stocks in times of emergency.
10. Government-to-government obligation, assuring involvement of DoD personnel in military planning, deployment concepts, operational planning, etc.
11. Better access to training at U.S. military schools.
12. Availability of end item, facilities, maintenance capabilities, configuration control, technical data, modifications, and catalog information.
13. FMS customers can use ILCS system.

Considerations

1. Purchaser must decide whether the total package may exceed its needs or financial capabilities.
2. Sophisticated foreign purchasing staff may (or may not) be able to achieve better overall deal by negotiating directly with the contractor.
3. Contractor may be able to offer a similar range of contractor logistics support.
4. Compliance with DoD procedures also tends to increase lead times, thus emphasizing need for country planning to start procurement process earlier.
5. Purchaser must decide on the degree of standardization required for a purchase.
6. While initial LOA estimates tend, in the aggregate, to be higher than final LOA costs, final costs fluctuate both up and down .
7. Firm fixed priced contracts and fixed payment schedules can be obtained under direct commercial contracts.
8. This service can be purchased under FMS for certain commercial contracts.
9. Availability is significantly dependent on DoD's own priorities and inventory positions.
10. Due to the political climate, the purchaser may prefer procuring from the U.S. contractor rather than the USG.
11. Purchaser can procure hardware under commercial contract, and generally obtain associated training at U.S. military schools via FMS.
12. Arrangements for maintaining configuration commonality with DoD could be requirements in the DCS contract.
13. Commercial customers must rely on the commercial telecommunications system.

ATTACHMENT 15-2

DIRECT COMMERCIAL SALES - POTENTIAL ADVANTAGES AND CONSIDERATIONS

Potential Advantages

1. Potential for fixed delivery or fixed price, with penalty if contractor fails.
2. Business-to-business relationship allows country to negotiate cost and contract terms.
3. Direct negotiations with contractor can result in a quicker response.
4. Generally better support for nonstandard items.
5. More capability to tailor package to unique country needs.
6. Continuity of personal contacts with contractor technical personnel.
7. New equipment directly from production line.
8. Lower prices possible under certain circumstances.
9. Generally fixed payment schedule which eases budgeting problems.
10. Purchaser can include offset provisions in one contract.
11. FMS administrative surcharge and DoD management costs can be avoided.
12. Commercial purchases of some types of items could help to create and develop a procurement capability.

Considerations

1. Requires considerable experience and sophistication by country negotiators.
2. If closer military-to-military relationships are a purchaser's objective, FMS provides an avenue to achieve this objective.
3. Requires considerable experience and sophistication by country negotiators.
4. Purchaser must decide upon desired degree of standardization with U.S. forces.
5. Tailored package may detract from standardization desires.
6. Value of continuity must be compared to the value of direct military-to-military contacts.
7. Option exists to request only new and unused items via FMS.
8. Final price may be dependent on experience and sophistication of country contract negotiators.
9. Payment schedules may be more front-loaded than under FMS.
10. Purchaser can negotiate offsets (directly with contractor) and still procure under FMS.
11. Purchaser must consider entire cost of transaction, including its contracting staff costs and possibly increased contractor administrative costs.
12. Scarcity of resources and time may not allow for this type of on-job training for procurement staffs.

ATTACHMENT 15-3

COMMON MISPERCEPTIONS OF FMS OR COMMERCIAL SALES

<u>Misperceptions</u>	<u>Facts</u>
1. FMS prices are cheaper.	1. Depends on item being purchased, negotiating skills, and many other variables.
2. Commercial prices are cheaper.	2. Depends on item being purchased, negotiating skills, and many other variables.
3. FMS offers better assurance for approval of transfer of technology.	3. Technology release considerations are identical for FMS and commercial sales.
4. Commercial sales offer a better assurance for approval of transfer of technology.	4. Technology release considerations are identical for FMS and commercial sales.
5. FMS is unreliable during hostilities involving either the user or the USG.	5. Foreign policy or DoD military priority decisions affect the flow of supplies to a country and can be expected to relate to the resource involved. FMS orders may still be filled depending on the nature of the hostilities.
6. Commercial sales are unreliable during hostilities involving either the user or the USG.	6. Foreign policy or DoD military priority decisions affect the flow of supplies to a country and can be expected to relate to the resource involved. There may be a tendency to fill FMS orders first, depending on the nature of the hostilities.
7. FMS provides slow or slack delivery schedule, with frequent slippages.	7. The numerous built-in FMS system safeguards do slow the procurement process sometimes, although there seldom are slippages once delivery schedules are established. However, in a contingency where a USG decision is made to divert items from service stocks and expedite delivery, service is exemplary.
8. Nonrecurring cost recoupment charges for major defense equipment is always assessed on FMS sales.	8. Nonrecurring cost recoupment waivers may be authorized for FMS on a case-by-case basis. Recent history indicates a high probability of waiver approval.
9. A country cannot have an offset arrangement when they have an FMS case.	9. A country may leave an offset arrangement in an FMS agreement, but the USG will not be the enforcer of offset arrangements between the country and the commercial contractor.
10. No purchaser control or participation is permitted in FMS.	10. Selection of configuration, range and depth of spares, support equipment, etc., remains in control of purchaser. Program management review conferences are held as necessary to assure purchaser needs are met. Under certain circumstances the purchaser may observe selected contracting proceedings.
11. FMS system is characterized by a lack of continuity of personnel contact due to military personnel rotations.	11. While this may be true for some cases, there are many DoD civilians who do not rotate. Also, military tour is normally three to four years about equal to commercial executive transfer patterns.

ATTACHMENT 15-3 (CONTINUED) **COMMON MISPERCEPTIONS OF FMS OR COMMERCIAL SALES**

<u>Misperceptions</u>	<u>Facts</u>
12. Only FMS requires USG approval and congressional notifications [Section 36(b), AECA], if necessary.	12. All items meeting AECA notification thresholds require notification under both sales systems. [Section 36(c), AECA], applies to commercial sale notifications to Congress.
13. USG reserves the right to terminate only FMS in the U.S. national interest but not DCS.	13. Applies equally to both FMS and commercial sale systems.
14. Quality control is not assured for items bought commercially.	14. Contractor sales depend on product reputation. Also, USG quality control procedures may be purchased for standard items.
15. Contractor involvement stops once an end item is sold.	15. Contractor participation in follow-on support and maintenance programs is common under either commercial or FMS.
16. USG controls third country sales only for items sold under FMS.	16. Criteria and policy are the same for items purchased through either commercial or FMS.

